

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS JOYCE

Plaintiff

v.

RICHARD DEVASTEY, et al.

Defendants

CIVIL ACTION

No. 12-0834

**NOTICE OF WITHDRAWAL IN PART OF  
MOTION TO DISMISS OF DEFENDANT FEDERAL DEPOSIT  
INSURANCE CORPORATION, AS RECEIVER FOR PROGRESS BANK OF FLORIDA**

FDIC-R hereby withdraws its Motion to Dismiss as to Defendants Richard Devastey, and Mango and August, Inc. only.

FDIC-R continues to seek the dismissal of the claims asserted against it by Plaintiff and the City of Philadelphia for the reasons set forth in the Motion to Dismiss.

Plaintiff never filed an administrative claim with the FDIC-R, and did not file any response to the Motion to Dismiss.

Defendant City of Philadelphia submitted a Proof of Claim on May 7, 2012, approximately four months *after* the January 9, 2012 submission deadline established in the Notice to Discovered Claimant sent to the City of Philadelphia. (See Exhibits F and H to Motion to Dismiss). The City made no contention that it could not have submitted a claim by January 9, 2012 — approximately five months after it had filed a cross-claim against Progress Bank in this action. The City of Philadelphia's claim was therefore disallowed by the FDIC-R as untimely. (See Exhibit J to Motion to Dismiss). The FDIC-R's disallowance is a "final" determination.

12 U.S.C. § 1821(d)(5)(C)(1); *Althouse v. Resolution Trust Corp.*, 969 F.2d 1544, 1546 (3d Cir. 1992).

In conclusion, FDIC-R hereby withdraws its Motion to Dismiss as to Devastey and Mango & August, and for the reasons asserted in the Motion to Dismiss, respectfully requests that the Court order that all claims asserted against FDIC-R by Plaintiff and Defendant City of Philadelphia be dismissed with prejudice. A proposed revised Order is attached.

Respectfully submitted,

s/ Lisa B. Wershaw  
Jeffrey S. Saltz  
Lisa B. Wershaw  
Attorneys for Defendant  
Federal Deposit Insurance Corporation, as  
Receiver for Progress Bank of Florida

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